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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 2

THE PEOPLE, Plaintiff and Respondent, v. DAVID RAMIREZ BECERRA, Defendant and Appellant.	A125454 (San Mateo County Super. Ct. No. SC068769A)

INTRODUCTION

David Ramirez Becerra appeals from the San Mateo County Superior Court's denial of his motion to suppress evidence under Penal Code[1] section 1538.5.[2] Following the denial, Becerra entered a negotiated plea of nolo contendere to one count of felony vehicle burglary, for which he was sentenced to jail time and probation. Becerra contends that his conviction rests on evidence obtained from an unreasonable detention. He asks this court to reverse the denial of his motion to suppress and vacate the judgment below. Alternatively, Becerra challenges various terms of his probation and alleges

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1 All statutory references are to the Penal Code, unless otherwise indicated.

2 Section 1538.5(a)(1)(A) provides, in part, that "[a] defendant may move . . . to suppress as evidence any tangible or intangible thing obtained as a result of . . ." an unreasonable search or seizure.

several errors in the minutes of his sentencing hearing. He requests that we strike the challenged probation conditions and correct errors in the minutes. After ordering certain corrections to the record below, we shall affirm judgment.

STATEMENT OF THE CASE

An information filed on June 2, 2009, charged Becerra with three felony counts: one count of second degree vehicle burglary under section 460, subdivision (b) (Count 1); one count of theft and unlawfully taking a vehicle under Vehicle Code section 10851, subdivision (a) (Count 2); one count of felony probation violation under section 666 (Count 3). The information alleged that, at the time of his arrest, Becerra was on probation for a previous section 460, subdivision (b) violation.

On June 11, 2009, Becerra pleaded not guilty to all counts and filed his motion to suppress all statements he made to the police, all evidence obtained as a result of his arrest, and all observations made by officers subsequent to his detention. The trial court denied the motion on July 8, 2009. Becerra immediately entered a negotiated plea of nolo contendere to Count 1. The remaining counts were dismissed. Trial court entered judgment on the conviction and imposed a sentence of three years probation in addition to a six-month jail term with 75 days credit for time served.

Becerra filed timely notice of appeal on July 8, 2009.

STATEMENT OF THE FACTS

San Bruno Police Officer Sherry Noakes first observed Becerra at approximately 4:35 a.m. on April 5, 2009. At the time, Noakes was in uniform and driving his marked patrol car south down Shelter Creek Lane alongside the Shelter Creek apartment complex in a residential San Bruno neighborhood. As he approached Whitman Way, where the two streets form a T-intersection, he saw Becerra standing on the corner, speaking into his cell phone and looking back and forth down Shelter Creek Lane. Becerra's location enabled him see down both streets as well as into the entrance of Garage 3 of the Shelter Creek apartment complex. He was "looking around a lot." Becerra watched Noakes as he drove past him and turned into Shelter Creek Garage 4, responding to an unrelated request for backup.

Becerra's conduct aroused Noakes' suspicion. He thought that Becerra's actions were consistent with those of a "lookout," one who keeps watch while his partners carry out a crime. Noakes' training and experience taught him that lookouts are commonly used in auto thefts, burglaries, and vandalism. He also knew of several vehicle burglaries and thefts in that area over the preceding two weeks. The Shelter Creek garages attracted a high number of such crimes, particularly in the early morning hours. The garages made for an inviting target: they were poorly lit, had very little security, and no camera coverage. The severity of the vehicle crime problem had led the complex to request additional patrols from the San Bruno Police Department. Noakes testified that he knew all of the above at the time he first saw Becerra. As he appeared to Noakes, Becerra was a suspicious person in a location frequented by individuals intent on committing crime.

Approximately 18 to 20 minutes later, Noakes returned to the intersection of Shelter Creek Lane and Whitman Way, where he observed Becerra for a second time. He had moved 20 to 25 feet north on Shelter Creek Lane. From that position, he could still see down both streets. After Becerra looked in the direction of Noakes' oncoming patrol car, he stepped off of the curb into a two-to-three-foot space between two cars parked bumper-to-bumper, and bent over at the waist. With a car in between himself and Noakes, Becerra concealed his entire body from Noakes' line of sight. Activating only his car's spotlight, Noakes trained it on Becerra's location and continued to drive forward. As Noakes pulled close enough to see Becerra, roughly parallel with the car that had blocked his view, Becerra stood up. Noakes then exited the patrol car with the intention of "detaining [Becerra] to speak to him" on the basis of his suspicions. Noakes did not flash his red and blue emergency lights or undertake any other overt act that would have signaled to Becerra that he was not free to leave.

As the two stepped toward each other, Noakes used a friendly tone of voice to ask Becerra if he would speak with him "for a minute." Becerra assented. In response to a series of Noakes' questions, Becerra stated that he did not live in the area and did not know what he was doing at that location. He also provided Noakes with a false birth date

and identified himself as "Michael Sanchez" of San Pablo. Noakes called that name and birth date in to dispatch.

In the two minutes before dispatch replied, Becerra explained that he had been with two other people, and that he had fallen asleep in a car he thought was bound for Vallejo, but instead awoke in San Bruno. Also during this period, Noakes asked Becerra if his pockets contained anything which they should not. He replied "no." Becerra then consented to Noakes' request to search his pockets. The search uncovered a dashboard air conditioning bezel, a small flashlight, a pink digital camera, and gold earrings. Shortly after Noakes discovered these items, dispatch reported back that the name and date of birth initially offered by Becerra did not match anyone on record.

Following the reply from dispatch, Becerra admitted to Noakes that "Michael Sanchez" was not his real name. Becerra next said true his name was "Humberto" or "Alberto" Becerra, which also proved false.[3] Noakes placed Becerra under arrest for providing a false name to an officer in violation of section 148.9.[4]

Becerra was apprised of his constitutional rights and transported to the station, where he admitted his involvement in auto burglaries at the Shelter Creek garages that morning. Specifically, Becerra stated that after falling asleep in the car he believed bound for Vallejo, he awoke to find the car parked in a San Bruno 7-11 parking lot. One of the two men with him, "Chockie," left the car, walked around the corner to the apartment complex, and returned several minutes later with a third person bearing a gold cross and earrings. "Chockie" told Becerra he had just perpetrated some auto burglaries, then handed Becerra the gold jewelry.

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[3] Officer Noakes later learned that this second name belonged to Becerra's brother.

[4] Section 148.9 appears only to proscribe false representation of identity once lawfully detained. Though Becerra disputed the lawfulness of his arrest under section 148.9 below, he does not raise the issue on appeal. We neither decide nor discuss the issue.

DISCUSSION

I. Becerra's Detention Was Justified by Reasonable Suspicion

The Fourth Amendment, in pertinent part, prohibits the unreasonable seizure of persons. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 19 (*Terry*); *People v. Souza* (1994) 9 Cal.4th 224, 229 (*Souza*).) Save for exceptions not relevant here, courts must exclude evidence obtained as a result of an unreasonable seizure. (See *People v. Garry* (2007) 156 Cal.App.4th 1100, 1105 (*Garry*), citing *People v. Williams* (1999) 20 Cal.4th 119, 125.) This principle extends to temporary investigative detentions, which are seizures (*Souza, supra,* 9 Cal.4th at p. 229, citing *Terry, supra,* 392 U.S. at p. 19, fn. 16), and must be justified by reasonable suspicion in order to pass constitutional muster. (See *Illinois v. Wardlow* (2000) 528 U.S. 119, 123 (*Wardlow*), citing *Terry, supra,* 392 U.S. at p. 30.) Reasonable suspicion for an investigatory stop exists "when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide [an] objective [basis to suspect] the person detained may be involved in criminal activity." (*Souza, supra,* 9 Cal.4th at p. 231.) Though a mere hunch cannot establish reasonable suspicion, the standard is considerably less demanding than a preponderance of the evidence. (See *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1058, citing *United States v. Arvizu* (2002) 534 U.S. 266, 273-274.) On appeal from a motion to suppress, we review findings of fact for substantial evidence, but exercise our independent judgment as to whether, on those facts, a given seizure was reasonable. (*Garry, supra,* 156 Cal.App.4th at p. 1106, citing *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Becerra contends that the trial court erred in denying his motion to suppress because he was detained without reasonable suspicion and that the evidence gained from his arrest must be excluded. According to Becerra, he was detained either when Noakes first began to question him or, at the latest, when she radioed in his name to dispatch. At neither point, Becerra asserts, did the surrounding circumstances establish the reasonable suspicion needed to lawfully detain him. His contention lacks merit. We conclude that

reasonable suspicion to detain Becerra existed by the time he was first questioned by Noakes.

When the circumstances known to an officer are " ' "consistent with criminal activity," they permit—even demand—an investigation[.]' " (*Souza, supra,* 9 Cal.4th at p. 233, citing *In re Tony C.* (1978) 21 Cal.3d 888, 894.) In *Souza,* an officer on patrol in an area known for frequent car thefts observed the defendant speaking with someone in a parked car in almost complete darkness, at 3:00 a.m. (*Souza, supra,* 9 Cal.4th at p. 228.) When suddenly illuminated by the patrol car's spotlight, the occupants of the car ducked down and the defendant fled, but was quickly apprehended. (*Ibid*.) A pat-down revealed drugs, leading to the defendant's conviction. (*Ibid*.) The California Supreme Court rejected the defendant's claim that his flight could not furnish the reasonable suspicion required to detain him. (*Id.* at pp. 227-228, 242.) Evasive conduct, it held, could serve as *a* key factor in determining whether a particular detention was justified by reasonable suspicion. (*Id.* at pp. 227, 240-241.) The court explained that the area's reputation, the defendant's presence near a parked car very late at night and in total darkness, when considered along with the evasive conduct of the defendant and those in the parked car, furnished police with reasonable suspicion that criminal activity was afoot. (*Id.* at p. 240-242.) The defendant's flight at the sight of a uniformed officer "show[ed] not only unwillingness to partake in questioning but also unwillingness to be observed and possibly identified, [which] is a much stronger indictor of consciousness of guilt." (*Id.* at pp. 234-235.)

The United States Supreme Court has similarly recognized "nervous, evasive behavior [as] a pertinent factor in determining reasonable suspicion." (*Wardlow, supra,* 528 U.S. at p. 124, citing *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 885; *Florida v. Rodriguez* (1984) 469 U.S. 1, 6 (per curiam); *United States v. Sokolow* (1989) 490 U.S. 1, 7.) In *Wardlow,* police in a high-crime area observed the defendant standing in the shadow of a building holding an opaque bag. (*Id*. at pp. 121-122.) The defendant looked in the officers' direction, then fled. (*Id*. at p. 122.) Officers apprehended the defendant and conducted a protective search that revealed a handgun and live rounds

hidden in his bag. (*Ibid*.) The Supreme Court held that the detention that uncovered the gun was supported by reasonable suspicion. (*Id.* at p. 125.) The Court explained that flight, as "the consummate act of evasion," is "certainly suggestive" of criminal wrongdoing. (*Id*. at p. 124.) It added that where conduct is ambiguous and equally susceptible to a criminal or innocent explanation, police may detain suspicious individuals to resolve the ambiguity. (*Ibid*., citing *Terry, supra,* 392 U.S. at p. 30.)

In contrast with evasive conduct, an individual's refusal to have a consensual encounter with officers is not a factor supporting reasonable suspicion for a detention. (See *People v. Perrusquia* (2007) 150 Cal.App.4th 228; see also *Souza, supra*, 9 Cal.4th at pp. 234-235 [a defendant's refusal partake in questioning is not a basis for reasonable suspicion].) In *Perrusquia,* officers observed the defendant in his idling car near the exit of a convenience store parking lot at a late hour following numerous reports of convenience store robberies. (*Perrusquia, supra,* 150 Cal.App.4th at p. 231.) As officers approached his car, the defendant turned off the engine, exited the vehicle, aggressively walked toward the open store, refused the officers' attempt to initiate a consensual encounter, and was quickly detained. (*Id.* at p. 231.) The search incident to his detention revealed a loaded handgun. (*Id.* at p. 232.) The Fourth Appellate District, upholding the gun's suppression, emphasized that the defendant's conduct involved "no immediately highly suspicious facts such as . . . flight" that would furnish reasonable suspicion for his detention. (*Id.* at p. 234.) In reaching this conclusion, the Court of Appeals implicitly acknowledged that one's refusal to engage in a consensual encounter with an officer, unlike evasion, does not support reasonable suspicion. (See *ibid*; see also *Souza, supra,* 9 Cal.4th at p. 233 [explicitly acknowledging that refusal and evasion are distinct].)

The instant case tracks *Souza* and *Wardlow* much more closely than it tracks *Perrusquia*. Critically, this case involves evasion, not the refusal of a consensual encounter. Whereas the *Souza* and *Wardlow* defendants tried to evade identification by fleeing, (see *Souza, supra,* 9 Cal.4th at pp. 234-235; *Wardlow, supra*, 528 U.S. at p. 122), Becerra concealed himself behind a parked car. His actions are very similar to those of the other suspects mentioned in *Souza,* as well. (*Id.* at p. 240 [ducking down inside

parked car to avoid detection characterized as an act of evasion].) That Becerra hid before Noakes provided any indication that she had seen him strongly suggests that Becerra sought to evade detection. It was only after he ducked down, for example, that Noakes activated her spotlight. And Becerra only stood up again after Noakes illuminated his hiding place and approached, once there could be no doubt that she had seen him.

That *Souza* and *Wardlow* feature defendants who fled, rather than hid, does not meaningfully distinguish those cases from the one before us. Those defendants knew that officers had discovered them; evading detection by means of concealment was not a live option. By contrast, Becerra was apparently alone on a darkened street.[5] Full-blown flight might have drawn attention to him and at best permitted him to avoid identification. Concealment, on the other hand, might allow him to evade detection entirely.

We reject Becerra's suggestion that concealing himself behind a parked car was a mere attempt to avoid a consensual encounter with Noakes. Unlike in *Perrusquia*, where the defendant simply displayed an unwillingness to submit to police questioning, Becerra's attempt to conceal himself after seeing a patrol car is suspicious precisely because he took steps to avoid observation. (See *Perrusquia, supra,* 150 Cal.App.4th at p. 235 (conc. opn. of O'Leary, J.) [distinguishing *Souza*, "[t]here is no evidence Perrusquia repositioned himself in response to police presence."].) More like *Souza*, Becerra's attempt to hide at the sight of a uniformed officer "shows not only unwillingness to partake in questioning but also unwillingness to be observed and possibly identified." (*Souza, supra,* 9 Cal.4th at pp. 234-235.) The latter kind of response amounts to more than a refusal; it is an act of evasion.

In addition to Becerra's evasive conduct, other circumstances support the reasonableness of Becerra's detention. Similar to *Souza*, Becerra was observed in a high crime area in the early morning hours. Also like *Souza*, it was sufficiently dark for Noakes to activate her spotlight. Finally, Noakes testified that Becerra's conduct was

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[5] It was at least dark enough for Noakes to activate her spotlight.

consistent with that of a lookout. While Becerra argues that innocent behavior "consistent with suspicious activity does not make [that behavior] actually suspicious," precedent dictates a contrary conclusion: conduct consistent with criminal activity is suspicious and merits investigation. (See *Wardlow, supra,* 528 U.S. at p. 125; *Souza, supra,* 9 Cal.4th at p. 233; see also *In re Tony C., supra,* 21 Cal.3d at p. 894). We conclude, based on the totality of the circumstances, that Becerra's detention was justified by reasonable suspicion. Therefore, the incriminating evidence obtained as a result of his detention was properly admitted.

II. Those Conditions of Becerra's Probation Imposed by His Probation Officer Must Be Amended in Part

Those sentenced to probation by a court "shall be under the supervision of [a probation officer who determines] both the level and type of supervision consistent with the court-ordered conditions of probation." (§ 1202.8, subd. (a).) "Probation officers have wide discretion to enforce court-ordered conditions." (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1373.) Further, probation officers' directives to probationers do not require court approval provided they are reasonably related to the court-ordered terms. (*Ibid.*) These directives may not, however, amount to new probation conditions separate from those imposed by the trial court. (*Ibid*.) Such directives must, instead, flow logically from a court-imposed condition. (*Ibid*.)

Becerra contends that certain portions of the "Conditions of Probation" prepared by his probation officer post-sentencing unreasonably added conditions that are more restrictive than those imposed by the trial court and must be stricken. At sentencing, the court imposed the following probation conditions relevant to this appeal:[6] "you'll obey all laws. . . . You will submit to search and seizure of your person, place of residence, vehicle, area under your control by any peace or probation officer. You will participate in counseling or treatment as directed. . . . You will maintain full time employment or

[6] All omitted conditions pertain to fees, jail time, or genetic marker registration, none of which implicate issues before the court on this appeal.

education or vocational training as directed. . . . You will not possess any dangerous or deadly weapons or firearms or ammunition." Becerra accepted all of these conditions at his July 8, 2009 sentencing.

On July 23, 2009, Becerra received and signed a document entitled "Conditions of Probation." The conditions he claims go beyond those imposed by the court are as follows, with the challenged portions underlined:

> 1) "You shall seek employment and, as far as possible, remain employed during the term of this probation. You shall keep the Probation Officer advised of your employment status, place of employment, address and phone number."
>
> 2) "You shall obey all laws. You shall inform the Probation Officer immediately of any arrest or new criminal charges."
>
> 3) "You shall not leave this State without first securing permission from the Probation Officer and are further required to at all times keep the Probation Officer advised of your physical whereabouts and legal residence and phone number."

Becerra asks us to strike the underlined portions of his "Conditions of Probation." In opposition, respondent suggests that Becerra's challenge to this issue on appeal is inappropriate, alleging that sections 1203.3 and 1203.1, subdivision (j) provide Becerra with statutory remedies that he should have first invoked in the trial court. Section 1203.1, subdivision (j) only discusses the modification of probation terms following a probation violation; it does not provide a means to challenge a probation officer's directives. (§ 1203.1, subd. (j).) While section 1203.3 does discuss conditions under which the trial court may modify probation at a hearing, nothing in the language of the statute appears to preclude us from reaching Becerra's claim. Judicial economy would not be served by returning this case to the trial court at this juncture.

Becerra contends that the probation officer exceeded his authority by directing Becerra to seek employment exclusively, ignoring the alternative provisions of the court-imposed condition allowing Becerra to seek and "maintain full time employment or education or vocational training as directed." Respondent agrees, and urges that we

resolve the matter by amending the Conditions of Probation to reflect that Becerra may seek employment, or pursue either an education or vocational training, rather than by striking the challenged condition in full.

The language suggested by respondent would only serve to duplicate the condition expressly imposed at sentencing that Becerra "maintain full time employment or education or vocational training as directed." As discussed later in this opinion, the trial court minutes must be corrected to accurately reflect the three alternatives allowed by the trial court in this condition. Once corrected, the minutes would render superfluous respondent's suggested amendment to the Conditions of Probation. The full-time employment provision of the Conditions of Probation must be stricken.

Becerra next contends that the probation officer's directive to self-report any new arrests or charges is not reasonably related to the trial court's "obey all laws" requirement. His contention lacks merit. The self-report condition facilitates supervision of Becerra. (See *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240.) It enables the probation officer to more easily determine if Becerra is in compliance with the terms of his probation, particularly the trial court's instruction to "obey all laws."

Becerra reminds this court that arrests and new charges "do not conclusively establish that a probationer has violated the laws." We agree. The Conditions of Probation, however, do not make a new arrest or new charges a violation. Rather, a new arrest or new charges may serve to alert the probation officer to a possible probation violation.

Becerra contends that the requirement that he keep his probation officer apprised of his physical whereabouts at all times is invalid because it does not flow from a condition imposed by the trial court. This condition is reasonable. By enabling the probation officer to more easily locate Becerra, the condition furthers the officer's monitoring function in general, and the court-imposed search and seizure condition in particular. We agree with Becerra that this condition is poorly drafted. Taken literally, it would require Becerra to inform his probation officer of his physical whereabouts at all times, no matter how brief a period he is at some location. Nevertheless, no reasonable

trial court would find Becerra to have violated the terms of his probation based on an arbitrary or unreasonable interpretation of the provision. (See, e.g., *People v. Kwizera, supra,* 78 Cal.App.4th at pp. 1240-1241 [holding the phrase "follow such course of conduct as the probation officer prescribes," could not "authorize [a] probation officer to irrationally tell a defendant 'to jump'" on command].)

III. The Court Minutes Are Erroneous, in Part, and Must Be Corrected

Becerra asks that we correct the minutes of his sentencing hearing to reflect only those probation conditions imposed by the trial court, including removal of certain other conditions that were not imposed at sentencing.

This court has " 'inherent power to correct clerical errors in its records so as to make these records reflect the true facts.' " (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) "Conflicts between the reporter's and clerk's transcripts are generally presumed to be clerical in nature and are resolved in favor of the reporter's transcript unless the particular circumstances dictate otherwise." (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249, citing *People v. Smith* (1983) 33 Cal.3d 596, 599; *In re Maribel T.* (2002) 96 Cal.App.4th 82, 86.) In those cases where a conflict is resolved in favor of the clerk's transcript, it is because the circumstances of the particular case entitle the clerk's account to greater credence. (*People v. Smith, supra,* 33 Cal.3d at p. 599.) To resolve conflicts between clerk's and reporter's transcripts, then, we look to the circumstances to determine which of the two most reliably embodies the terms contemplated by the trial court. (See *In re Maribel T., supra,* (2002) 96 Cal.App.4th at p. 86.)

The minutes from Becerra's sentencing include the following provisions, which he challenges on appeal.

> "[c]onditions of probation (in addition to the usual conditions re: supervision, employment, obedience of laws, remaining in state and keeping probation officer advised of whereabouts):
>
> "Defendant shall submit to chemical testing for the detection of alcohol and controlled substances[;]

"defendant shall submit to search and seizure of his/her person, place of residence or area under his/her control, or vehicle, by any probation officer or peace officer, during the day or night, with or without his/her consent, with or without a search warrant, and without regard to probable cause[;]

"[¶] . . . [¶]

"Defendant shall seek and maintain full-time employment and participation in a vocational or educational program as directed by the probation officer[;]

"[¶] . . . [¶]

"Defendant shall not own or possess dangerous or deadly weapons and/or firearms."

Becerra first contends that this court should strike the parenthetical statement beginning with "in addition" and ending with "whereabouts" in its entirety. We decline to do so because, save for the "remain in state" and "employment" conditions, everything stated within the parenthetical reflects the will of the trial court as stated at sentencing, or a statutory requirement of probation. The trial court ordered Becerra to obey all laws. As discussed earlier in this opinion, the "whereabouts" condition is an expression of statutory requirement that a probationer submit to supervision of the probation officer. (See § 1202.8.) The requirement that one submit to "supervision," while not mentioned at sentencing, is implicit in any grant of probation. All three conditions are properly recorded by the minutes.

Both parties to this appeal agree, and the reporter's transcript confirms, that the trial court did not impose the "remain in state" condition set forth in the minutes. Becerra insists that we should strike the condition. Respondent, however, urges this court to amend the statement so as to permit Becerra to leave the state only with his probation officer's permission. We decline to follow respondent's suggestion because the trial court made no mention of travel restrictions in its ruling. We cannot assume that the trial court intended to impose a discretionary condition that it did not address, especially not

one implicating Becerra's constitutional rights,[7] and any modification of the language in the minutes would require speculation as to the court's intent. This portion of the minutes must be stricken.

The "employment" condition stated in the parenthetical, much like the probation officer's employment directive discussed earlier, is more limited than the court-imposed condition that Becerra seek employment, or education, or vocational training. A similar problem also crops up outside the parenthetical, where the minutes instruct Becerra to "seek and maintain full-time employment and participation in a vocational or educational program . . . ." The minutes thus appear to require Becerra to participate in an educational or vocational program in addition to full-time employment, whereas the trial court offered employment, education and vocational training as three separate alternatives for satisfying this condition. The minutes must be amended to state, in accordance with the trial court's language, that Becerra "maintain full time employment or education or vocational training as directed."

Becerra further contends that the minutes erroneously require him to "submit to chemical testing for the detection of alcohol and controlled substances," when the trial court did not impose such a condition. Respondent concedes that the trial court could not require Becerra to submit to alcohol testing because alcohol consumption is legal, unrelated to Becerra's crimes, and there is no indication that alcohol consumption is likely to precipitate further wrongdoing on his part. (See *People v. Kiddoo* (1990) 225 Cal.App.3d 922, 925-927 disapproved on another ground in *People v. Welch* (1993) 5 Cal.4th 228, 236-237.) Respondent contends, however, that the controlled substance

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[7] A restraint on travel trenches close to Becerra's constitutional right to interstate travel. (See *Miller v. Reed* (9th Cir. 1999) 176 F.3d 1202, 1205, citing *Attorney General of New York v. Soto-Lopez* (1986) 476 U.S. 898, 903 (plur. opn. of Brennan, J.) The California Supreme Court has held that probation conditions that limit a probationer's constitutional rights must be closely tailored to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. (*People v. Olguin* (2008) 45 Cal.4th 375, 384.)

testing condition should remain because such testing furthers the probation officer's monitoring function with respect to Becerra's obedience to all laws. We agree.

Becerra also challenges the search and seizure language in the minutes. At sentencing the trial court ordered Becerra to submit to search and seizure without regard for probable cause. While the condition is stated with greater specificity in the minutes (e.g., "day or night"), it is in keeping with a standard condition of probation. (See, e.g., *United States v. Knights* (2001) 534 U.S. 112, 121 [probable cause not required for probation search and seizure].)

Becerra last contends the minutes erroneously prohibit him from both ownership and possession of firearms and other deadly weapons, whereas the trial court at sentencing only prohibited the possession of firearms or other deadly weapons. His contention lacks merit.

Becerra is a convicted felon. Among other things, section 12021, subdivision (a)(1) prohibits felons from possessing or owning firearms. Section 12020, subdivision (a) also prohibits possessing or owning deadly weapons, absent certain exceptions not relevant here. The prohibition on owning firearms or deadly weapons is thus a corollary of the trial court's order to obey all laws.

DISPOSTION

The Conditions of Probation and the trial court minutes shall be corrected in accordance with the views stated herein. The judgment is affirmed.

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Kline, P.J.

We concur:

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Lambden, J.

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Richman, J.